

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**In The Matter of**

**Joint Application by BellSouth Corporation,  
BellSouth Telecommunications, Inc.,  
and BellSouth Long Distance, Inc. for  
Provision of In-Region, InterLATA Services  
in Georgia and Louisiana**

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**CC Docket No. 02-35**

**OPPOSITION OF THE  
ASSOCIATION OF COMMUNICATIONS ENTERPRISES**

The Association of Communications Enterprises (ASCENT’),<sup>1</sup> through undersigned counsel and pursuant to Public Notice, DA 02-35 (released February 14, 2002), hereby opposes the joint application ("Application") filed by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively "BellSouth") for authority to provide in-region, interLATA service in the States of Georgia and Louisiana, pursuant to Section 271 of the Communications Act of 1934 (the “Act”), as amended by the Telecommunications Act of 1996.<sup>2</sup>

As ASCENT will demonstrate herein, BellSouth has not satisfied “the ultimate burden of proof that its application satisfies all of the requirements of section 271,”<sup>3</sup> failing to satisfy either Competitive

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<sup>1</sup> ASCENT is a national trade association representing smaller providers of competitive telecommunications and information services. The largest association of competitive carriers in the United States, ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services.

<sup>2</sup> 47 U.S.C. § 271.

<sup>3</sup> Application of Bell Atlantic New York for Authorization Under Section 271 of the

Checklist Item No. 2 or the public interest component of Section 271(d)(3)(C) of the Communications Act of 1934 (the “Act”), as amended by the Telecommunications Act of 1996.<sup>4</sup> The Commission, accordingly, should not, indeed, cannot, reward BellSouth with authority to originate interLATA traffic in either Georgia or Louisiana.

In opposing grant of the initial iteration of BellSouth’s Georgia/Louisiana Application, ASCENT demonstrated that the carrier’s pricing of unbundled network elements (“UNEs”) did not pass statutory muster. As ASCENT emphasized, rates assessed for UNEs pass statutory muster only if basic Total Service Long-Run Incremental Cost (“TELRIC”) principles have been followed in computing the charges and “the resulting rates are within the range that reasonable application of TELRIC would produce.”<sup>5</sup> BellSouth’s UNE rates did not then and do not now, meet either of these criterion fully.

In its initial opposition, ASCENT, emphasizing Verizon’s Georgia and Louisiana loop charges, showed that the carrier’s rates (as reported by BellSouth to the Commission<sup>6</sup>) exceeded

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Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), 15 FCC Rcd. 3953, ¶ 44 (1999) (*subsequent history omitted*).

<sup>4</sup> 47 U.S.C. §§ 271(c)(2)(B)(ii), 271(d)(3)(C).

<sup>5</sup> Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in Pennsylvania (Memorandum Opinion and Order), 16 FCC Rcd. 17419, ¶ 55 (September 19, 2001) (*subsequent history omitted*).

<sup>6</sup> Letter from Glenn T. Reynolds to Magalie Roman Salas, Secretary, Federal Communications Commission, filed in CC Docket No. 01-277 on October 17, 2001.

like Verizon rates in New York and Massachusetts and like Southwestern Bell Telephone Company (“SWBT”) rates in Texas, Oklahoma and Kansas, often by substantial margins:

		<u>New York</u>	<u>Massachusetts</u>	<u>Texas</u>	<u>Oklahoma</u>	<u>Kansas</u>
Louisiana Loop						
Zone 1	9%		-8%	6%	6%	9%
Zone 2	87%	45%	71%	71%	71%	
Zone 3	152%		142%	155%	185%	108%
Georgia Loop						
Zone 1	20%		1%	15%	15%	20%
Zone 2	31%	2%	20%	20%	20%	
Zone 3	36%	30%	37%	-1%	12%	

Continuing ASCENT calculated that BellSouth’s loop rates exceeded those assessed by Verizon and SWBT in all instances but two, with Louisiana charges in Zone 2 well into the double digits higher and in Zone 3 well into the triple digits higher, and with Georgia rates averaging roughly 20 percent higher across the board. And ASCENT noted that comparable differences existed with respect to platform rates and DSL loop charges in Louisiana, with double digit percentage differences in Zone 2 and triple digit percentage differences in Zone 3, and that loop installation charges in Georgia and Louisiana also exceeded comparable charges in New York, Massachusetts, Texas, Oklahoma, and Kansas by upwards to more than 180 percent.

ASCENT pointed out that these rate differentials were not justified by cost differences between these various states as revealed through application of the Commission’s

Universal Service Fund (“USF”) cost model.<sup>7</sup> By way of example, ASCENT noted that Louisiana’s loop costs were roughly comparable to those of Oklahoma, while Georgia’s loop costs were roughly comparable to those of Kansas. Louisiana’s loop rates, however, ranged from 6 percent to 185 percent higher than Oklahoma’s loop rates, with a weighed average rate differential of roughly 33 percent, and Georgia’s loop rates ranged from 12 percent to 20 percent higher than Kansas’ loop rates, with a weighed average rate differential of roughly 20 percent.<sup>8</sup>

BellSouth responded by emphasizing that its average loop rates were only 17 percent and 23 percent higher in Georgia and Louisiana, respectively, than Verizon’s average loop charges in New York, while loop costs in Georgia and Louisiana were, respectively, 28 percent and 52 percent higher than loop costs in New York.<sup>9</sup> The New York Public Service Commission (“NYPSC”), however, has reduced loop charges in New York by an average of 23 percent in order to render them TELRIC-compliant, thereby negating BellSouth’s defense.<sup>10</sup>

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<sup>7</sup> Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Service in Kansas and Oklahoma (Memorandum Opinion and Order), 16 FCC Rcd 6237, ¶¶ 82 - 86 (2001) (*subsequent history omitted*).

<sup>8</sup> Id.

<sup>9</sup> BellSouth Reply, Joint Reply Affidavit of John A. Ruscilli and Cynthia K. Cox at ¶ 14.

<sup>10</sup> Proceeding on Motion of the Commission to Examine New York Telephone Company’s Rates for Unbundled Network Elements (Order on Unbundled Network Element Rates), Case 98-C-1357 (January 28, 2002).

The NYPSC's recent cost determinations further give lie to BellSouth's defense of its unbundled local switching charges as TELRIC-compliant. Unbundled local switching charges in Louisiana had been comparable to superceded New York switching rates, while unbundled local switching charges in Georgia had been roughly ten percent lower than the old New York rates. The NYPSC required Verizon to reduce its unbundled local switching charges by roughly 40 percent to render them TELRIC compliant.<sup>11</sup> BellSouth's Georgia and Louisiana unbundled local switching charges are hence 30 to 40 percent higher than rates which have been adjudged to be TELRIC-compliant.<sup>12</sup>

Certainly rate differentials of this magnitude cannot be said to be within the range that reasonable application of TELRIC principles would produce. Not surprisingly, these differentials reflect methodological failings, most notably a failure by BellSouth to faithfully and consistently apply the Commission's "most efficient network configuration" pricing principles. In Louisiana, BellSouth, instead of relying upon the single lowest cost network configuration to compute its rates, factored in three or more network "scenerioes," seriously understating in so doing economies of scope and scale.<sup>13</sup> In Georgia, the carrier employed a statistical sample of its historical network design which overstates rates by failing to take fully into account the most efficient, lowest cost network configuration.

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<sup>11</sup> Id.

<sup>12</sup> It is noteworthy that BellSouth itself calculates its switching charges to be nearly 50 percent higher in both Georgia and Louisiana than in Texas or Oklahoma. BellSouth Reply, Joint Reply Affidavit of John A. Ruscilli and Cynthia K. Cox at ¶ 19.

<sup>13</sup> BellSouth compounds the problems inherent in its multi-network costing approach by incorporating cost allocation factors which reflect its existing network.

These pricing differentials are also attributable BellSouth's use of inadequate fill factors, excessive capital costs, anemic productivity factors, inflated loading factors, and outdated switch costs, each contributing to rate inflation. The fill factor for distribution cable utilized to compute BellSouth Louisiana unbundled loop rates was 41 percent, with the factor used to compute the carrier's Georgia unbundled loop rates being only slightly higher at 48 percent. The Commission has previously questioned the use of a 40 percent fill factor, citing with approval factors in the 50 to 75 percent and above range.<sup>14</sup> The cost of capital used to compute BellSouth Louisiana rates exceeded ten percent, at least two full percentage points more than the carrier needs to secure necessary equity and debt infusions. The productivity factors BellSouth used to compute its UNE rates are a mere fraction of the 6.5 percent productivity factor recognized by the Commission as appropriate in the access charge context.<sup>15</sup> The loading factors employed by BellSouth reflect the carrier's historical experience and hence reflect embedded, rather than forward-looking, costs. Finally, the switching costs utilized by BellSouth reflect 1997 data, which has been rendered highly overstated by the far more efficient use of switching capacity in the current market and the greater volume-based discounts available to carriers today.

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<sup>14</sup> Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts (Memorandum Opinion and Order), 16 FCC Rcd. 8988, ¶ 39(2000) (subsequent history omitted); Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in Pennsylvania (Memorandum Opinion and Order), CC Docket No. 01-138, FCC 01-269 at ¶ 58; Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Service in Kansas and Oklahoma (Memorandum Opinion and Order), 16 FCC Rcd 6237 at ¶ 80.

<sup>15</sup> Access Charge Reform (Sixth Report and Order), 15 FCC Rcd. 12962, ¶ 157 (2000) (subsequent history omitted).

Because BellSouth's UNE rates are not TELRIC compliant in either Georgia or Louisiana, the carrier has not satisfied the second element of the competitive checklist, or for that matter, the public interest component, of Section 271(d)(3)(C) of the Act.

By reason of the foregoing, the Association of Communications Enterprises urges the Commission to deny as premature the Joint Application filed by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for authority to provide in-region, interLATA service in the States of Georgia and Louisiana, and to require, as mandated by Section 271(d)(3) of the Act, full compliance with the competitive checklist before BellSouth is granted such authority.

Respectfully submitted,

**ASSOCIATION OF COMMUNICATIONS  
ENTERPRISES**

By:                     /s/                      
Charles C. Hunter  
Catherine M. Hannan  
HUNTER COMMUNICATIONS LAW GROUP  
1424 16<sup>th</sup> Street, N.W.  
Suite 105  
Washington, D.C. 20006  
(202) 293-2500

March 4, 2002

Its Attorneys

## **CERTIFICATE OF SERVICE**

I, Charles C. Hunter, do hereby certify that a true and correct copy of the foregoing document was served by first class mail, postage prepaid, on the individuals list on this 4th day of March, 2002:

Deborah Flannagan  
Executive Director  
Georgia Public Service Commission  
244 Washington Street, S.W.  
Atlanta, Georgia 30334

Lawrence C. St. Blanc  
Secretary  
Louisiana Public Service Commission  
One American Plaza, Suite 1630  
P.O. Box 91154  
Baton Rouge, Louisiana 70821-9154

Larry Bobbish  
U.S. Department of Justice  
Telecommunications Task Force  
Antitrust Division  
1401 H Street, N.W.  
Suite 8000  
Washington, DC 20530

James G. Harralson  
Fred J. McCallum, Jr.  
Jim O. Llewellyn  
Lisa S. Foshee  
Bell South Corporation  
4300 Bell South Center  
675 West Peachtree Street  
Atlanta, Georgia 30375

Bennett L. Ross  
BellSouth Corporation  
1025 Lenox Park Blvd.  
Suite 6C01  
Atlanta, Georgia 30319

Michael K. Kellogg  
Sean A. Lev  
Leo R. Tsao  
Kellogg, Huber, Hansen,  
Todd & Evans, P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, DC 20036

Victoria K. McHenry  
BellSouth Corporation  
365 Canal Street  
Suite 3060  
New Orleans, LA 70130

Jeffrey S. Linder  
Suzanne Yelen  
Wiley Rein & Fielding, LLP  
1776 K Street, N.W.  
Washington, DC 20006

Jonathan B. Banks  
BellSouth Corporation  
1133 21st Street, N.W.  
Room 900  
Washington, DC 20036

Harris R. Anthony  
BellSouth Corporation  
400 Perimeter Center Terrace  
Suite 350  
Atlanta, GA 30346

/s/

Charles C. Hunter